Wisconsin State Assembly
2nd Assembly District

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TED ZIGMUNT

STATE REPRESENTATIVE

Testimony in favor of AB 410
Assembly Committee on Corrections & The Courts
September 23, 2009

Chairman Parisi, Correction and Courts Committee members, thank you for allowing me to testify today regarding Assembly Bill 410.

Under Wisconsin law, domestic violence offenders may not contact the victim within 72 hours of arrest, unless the victim consents to contact in writing. Currently, Wisconsin law contains a loophole that allows offenders to violate the 72-hour no-contact condition with relative impunity.

When an individual is arrested pursuant to Wisconsin's domestic abuse mandatory arrest law, the individual may not be released until he or she has posted bail or appears before a judge for a bond hearing. When a defendant posts bail from the jail, he or she signs a conditional release agreement. The agreement states the defendant will not contact the victim for 72 hours unless written consent of the victim is filed. The agreement also notifies the defendant that if he or she violates the agreement, the defendant will be subject to a forfeiture of up to $1,000.

If after signing this document, the defendant immediately contacts the victim, the defendant may only be assessed with the forfeiture. Some law enforcement agencies will re-arrest the defendant and book the defendant at the station for the forfeiture; however, the defendant must be immediately released. The defendant cannot be held in custody or further charged with bail-jumping because violation of the 72-hour no-contact condition is not defined as a crime. Therefore unless the defendant acts in an intimidating or harassing manner, the defendant has technically not violated any of the conditions of bail by contacting the victim.

Wisconsin law should be amended so that violation of the 72 hour no-contact condition is treated in the same manner as a violation of bail conditions. Victims' advocates and law enforcement experience intense frustration because of this loophole.

Under AB 410, a person who violates these provisions is guilty of a Class A misdemeanor and is subject to a fine not to exceed $10,000, imprisonment not to exceed nine months, or both.

This bill has the support of Wisconsin Professional Police Association and the Wisconsin Coalition Against Domestic Violence.

Thank you once again for allowing me to testify before all of you today.

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Testimony

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

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To: Members of the Assembly Committee on Corrections and the Courts

From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence

Date: September 23, 2009

Re: Assembly Bill 410

Chairperson Parisi and Members of the Committee, thank you very much for the opportunity to provide testimony on Assembly Bill 410. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV provides statewide support for victims of domestic abuse, their families, and for professionals working with victims, batterers, and their children. WCADV fully supports this bill, which will close the current domestic violence bail loop-hole. AB 410 will amend Wisconsin's domestic abuse mandatory arrest law so that violations of the 72-hour no-contact conditional release are treated in the same manner as violations of bail conditions.

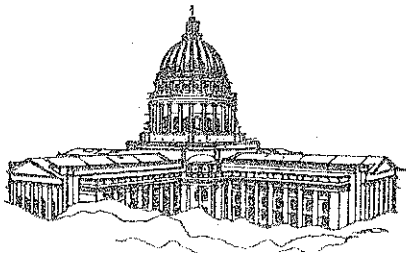
Currently, when an individual is arrested in accordance with Wisconsin's domestic abuse mandatory arrest law, the individual may not be released until he or she has posted bail or appears before a judge for a bond hearing. When a defendant posts bail from the jail, he or she is required to sign a document addressing bail conditions and a document pertaining to contact with the victim. The latter is a conditional release agreement that states that the defendant will not contact the victim for 72 hours unless the victim consents to contact in writing.

The 72-hour no-contact conditional release is an important feature of Wisconsin's mandatory arrest law. Many states have similar provisions, which are commonly referred to as cooling off periods. Cooling off periods are informed by an understanding that repeat abuse is most likely to occur in the first few days following an initial attack. The time period also gives victims an opportunity to relocate or seek services. When the police are called or victims take steps to leave, perpetrators, driven by a desire to reassert dominance and control, are more likely to become increasingly violent. The 72-hour no-contact condition should provide victims a measure of breathing room during this dangerous time.

Passage of AB 410 is necessary to make the cooling off period an effective protection for victims. Under the current statute, violations of the no-contact condition are only punishable with a monetary forfeiture; and therefore, violations are not defined as crimes. This results in an untenable situation. The offender has willfully violated a condition of his release, but law enforcement has no legal authority to return the offender to custody. Law enforcement officers operating under this system are extremely frustrated by their powerlessness to enforce the conditional release. Likewise, victims lose faith in the ability of the legal system to protect them. Even more troubling, offenders lose respect for the law and are allowed to push legal boundaries without consequence.

AB 410 will give power back to victims and police and prevent savvy offenders from taking advantage of legal loop-holes. The bill will allow law enforcement to charge the defendant with a crime and hold him in custody, providing added protection to victims of domestic abuse. Further, it will change the 72-hour no-contact statute to provide that a violation of the conditional release is a Class A misdemeanor, treating it in the same manner and penalty as a violation of bail conditions.

Thank you again for the opportunity to provide testimony. I urge the committee to support AB 410.



LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Testimony of Senator Lena C. Taylor
Assembly Committee on Corrections and the Courts
Assembly Bill 410 – Closing the Domestic Violence Bail Loophole
Tuesday, September 23, 2009

Honorable members of the committee,

Thank you for taking testimony on Assembly Bill 410, a simple bill that closes a loophole which allows domestic violence offenders to violate the 72-hour no-contact condition with relative impunity. I am pleased to partner this session with Rep. Ted Zigmunt and your Chairman, Rep. Joe Parisi, to offer this bill.

Currently, under state law, when a defendant posts bail from the jail, he or she signs a conditional release agreement stating the defendant will not contact the victim for 72 hours unless written consent of the victim is filed. If after signing this document, the defendant immediately contacts the victim, the defendant may only be assessed with a forfeiture of up to $1,000.

This is a problem because the defendant cannot be held in custody or further charged with bail-jumping, currently a Class A misdemeanor, because violation of the 72-hour no-contact condition is not defined as a crime. Therefore unless the defendant acts in an intimidating or harassing manner, the defendant has technically not violated any of the conditions of bail by contacting the victim.

This bill would change the 72-hour no-contact statute to provide that a violation of the conditional release is also a Class A misdemeanor.

This is a common sense, simple solution to the problem, which is supported by the Wisconsin Coalition Against Domestic Violence.

I encourage your support of this bill.

Thank you.

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Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing (Chair)
Committee on Justice Reinvestment Initiative Oversight (Chair)

Joint Committee on Finance
Joint Committee for Review of Criminal Penalties (Co-Chair)
Committee on Strengthening Wisconsin Families (Co-Chair)

Testimony Against AB-410
9/23/09

Tom Pfeiffer – Executive VP
Wisconsin Fathers for Children and Families

This is a bill that is unnecessary at best and ill-conceived at worst. We currently have stiff penalties for violations of the 72 hr. no contact provision in cases where domestic violence (DV) is alleged.

Remember that these are cases where no findings of guilt have been made, as they have not at the time of the 72 hour provision typically been adjudicated in the courts. A person, (and we all know this means the man in nearly all cases) can be falsely accused of DV and then face substantial criminal and financial penalties for an accusation that may well be dismissed at a later court date. Why would the legislature want to put men in jail and fine them up to $10,000 for an as yet unproven allegation of a crime? If children are involved, (and they often are) how does jailing the father help in providing needed child support?

Though this bill is not part of chapter 767 of the statutes, it certainly has great relevance to family law. I urge each of you to spend some time reading 767. In major sections of 767 you will now find more references to DV than you will find to "the best interests of the children". If you didn't know you were reading the family law statutes, you'd think you were reading a chapter of the statutes pertaining primarily to DV. I see this trend as one of "the tail wagging the dog", and want to encourage all of you to instead re-focus on areas of the law where we do not as yet have a proper amount of penalties for clear violations.

For example, where are the penalties for false allegations of domestic abuse? Surely you all understand that these occur with great frequency. Talk to any family law attorney and they will tell you that such allegations are commonly used to gain an upper hand in custody and placement disputes where children are involved. Why don't you focus on these heinous allegations? I suspect if you did, and if you put some teeth into penalties for falsely accusing someone, we would see a diminishment of these in general. If someone can be locked up for nine months and fined $10,000 for going back to their own home during the 72 hour period of no contact even when the charge against them is FALSE, then why on earth would you not make similar penalties for the person making the false charge?

I suspect that if you did put teeth into penalties for false claims of abuse, you would get our support for legislation such as this. No one is supportive of DV and we are as sensitive to this as any other group you may hear from. **But as long as we all know there is a high preponderance of false claims and virtually no down side for making these, the need for significantly increasing penalties in this particular bill is simply not justified.**

I would encourage you instead to focus on both false claims of abuse and the other major violation we see fathers suffering on a daily basis, which is violations of court enacted placement orders. This occurs with alarming frequency, and law enforcement officials rarely do anything about it other than to document its occurrence. Here is where the best interest of children is being seriously and frequently violated, yet nothing is being done about it. Why should police be telling fathers to go back to court to resolve these violations, when in fact the court has already resolved them?

False allegation and placement violations often go hand in hand and both generally go unpunished by our courts. Here is a typical example from a father I spoke to twice this week. He was denied placement of his 9 yo daughter for the entire summer. He was supposed to have e/o w/e and two weeks of placement in the summer. The mother will not let the daughter see him and just this past Labor Day Weekend refused again, when he was supposed to have placement. When the dad asked the police to intercede, they went to the mother's home and she told the police that the dad was being investigated for domestic violence against the daughter. She had apparently made such a claim early in the summer, though the father had never been informed of this. When he contacted Child Protective Services (CPS) about this charge, CPS informed him that a claim was made, investigated in early summer, and summarily dismissed within days. Yet the mother had used this false claim all summer to deny a father his relationship with his daughter. She even had told officials at the daughter's school early this month that the father was not allowed to have any contact with the daughter, again a patently false charge.

I suggest that you spend your collective energies more wisely and address those areas of the law pertaining to abuse (and I mean here ALL types of abuse, such as those shown in the example above) that currently have not received sufficient legislative attention. Rather than focusing here on an area of the law that has already seen dramatic amounts of legislative attention, why don't you instead direct your efforts to those areas of the law that remain either impotently weak or silent altogether?

Thank you.